

1 SENATE BILL NO. 323

2 INTRODUCED BY C. FRIEDEL

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 4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE MONTANA ADMINISTRATIVE
 5 PROCEDURE ACT; REQUIRING AN ECONOMIC IMPACT STATEMENT FOR RULE PROPOSALS;
 6 RESCINDING LEGISLATIVE DELEGATIONS OF RULEMAKING POWER CONCERNING RULES THAT
 7 HAVE AN ESTIMATED ECONOMIC IMPACT OF MORE THAN \$1 MILLION; REPEALING PROVISIONS
 8 CONCERNING SMALL BUSINESS IMPACT ANALYSES; AMENDING SECTION 2-4-405, MCA; REPEALING
 9 SECTION 2-4-111, MCA; AND PROVIDING AN APPLICABILITY DATE."

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 11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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 13 NEW SECTION. **Section 1. Rulemaking authority -- restriction.** As of [the effective date of this
 14 act], any rulemaking authority delegated by statute to an agency to adopt, amend, or repeal a rule that has an
 15 economic impact estimated by the agency to be \$1 million or more in a year is rescinded.

16
 17 **Section 2.** Section 2-4-405, MCA, is amended to read:

18 **"2-4-405. Economic impact statement.** (1) ~~Upon written request of the appropriate administrative~~
 19 ~~rule review committee based upon the affirmative request of a majority of the members of the committee at an~~
 20 ~~open meeting, an~~ An agency shall prepare a statement of the economic impact of the adoption, amendment, or
 21 repeal of a rule as proposed. ~~The agency shall also prepare a statement upon receipt by the agency or the~~
 22 ~~committee of a written request for a statement made by at least 15 legislators. If the request is received by the~~
 23 ~~committee, the committee shall give the agency a copy of the request, and if the request is received by the~~
 24 ~~agency, the agency shall give the committee a copy of the request. As an alternative, the committee may, by~~
 25 ~~contract, prepare the estimate.~~

26 (2) ~~Except to the extent that the request expressly waives any one or more of the following, the~~
 27 ~~requested~~ The statement must include ~~and the statement prepared by the committee may include:~~

28 (a) a description of the classes of persons who will be affected by the proposed rule, including classes

1 that will bear the costs of the proposed rule and classes that will benefit from the proposed rule;

2 (b) a description of the probable economic impact of the proposed rule upon affected classes of
3 persons, including but not limited to providers of services under contracts with the state and affected small
4 businesses, and quantifying, to the extent practicable, that impact;

5 (c) the probable costs to the agency and to any other agency of the implementation and enforcement
6 of the proposed rule and any anticipated effect on state revenue;

7 (d) an analysis comparing the costs and benefits of the proposed rule to the costs and benefits of
8 inaction;

9 (e) an analysis that determines whether there are less costly or less intrusive methods for achieving
10 the purpose of the proposed rule;

11 (f) an analysis of any alternative methods for achieving the purpose of the proposed rule that were
12 seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule;

13 (g) a determination as to whether the proposed rule represents an efficient allocation of public and
14 private resources; and

15 (h) a quantification or description of the data upon which subsections (2)(a) through (2)(g) are based
16 and an explanation of how the data was gathered.

17 ~~(3) A request to an agency for a statement or a decision to contract for the preparation of a statement
18 must be made prior to the final agency action on the rule. The statement must be filed with the appropriate
19 administrative rule review committee within 3 months of the request or decision. A request or decision for an
20 economic impact statement may be withdrawn at any time.~~ (a) At the time a rule is proposed, an economic
21 impact statement must be filed with the appropriate administrative rule review committee.

22 (b) If the appropriate administrative rule review committee has adjourned its final regularly scheduled
23 meeting of the biennial interim, in lieu of filing the economic impact statement with the committee, the agency
24 shall publish the economic impact statement with the proposal notice in the register.

25 (4) (a) Upon receipt of an impact statement under subsection (3)(a), the committee shall determine
26 the sufficiency of the statement.

27 (i) If the committee determines that the statement is insufficient,-;

28 (A) the committee may return it to the agency or other person who prepared the statement and

1 request that corrections or amendments be ~~made~~made; or

2 (B) the committee, or at least 20 legislators, may instruct the committee to contract for an
3 independent economic impact statement.

4 (ii) If the committee determines that the statement is sufficient, a notice, including a summary of the
5 statement and indicating where a copy of the statement may be obtained, must be filed with the secretary of the
6 state for publication in the register by the agency preparing the statement or by the committee, if the statement
7 is prepared under contract by the committee, and must be mailed to persons who have registered advance
8 notice of the agency's rulemaking proceedings.

9 (b) If an economic impact statement is published in the register under subsection (3)(b), when the
10 appropriate administrative rule review committee convenes, it may review the statement and request
11 corrections or amendments be made to the statement.

12 (5) Except as provided by subsection (6) and in accordance with [section 1], an agency may not
13 adopt, amend, or repeal a rule if the agency estimates that the adoption, amendment, or repeal of the rule has
14 an economic impact of \$1 million or more in a year. In this case, the adoption, amendment, or repeal of the rule
15 may only be accomplished pursuant to a legislative bill.

16 ~~(5)(6)~~ This section does not apply to:

17 (a) rulemaking pursuant to 2-4-303; and

18 (b) rulemaking delegated to an agency by the Montana constitution.

19 ~~(6)(7)~~ The final adoption, amendment, or repeal of a rule is not subject to challenge in any court as a
20 result of the inaccuracy or inadequacy of a statement required under this section.

21 ~~(7)(8)~~ An environmental impact statement prepared pursuant to 75-1-201 that includes an analysis of
22 the factors listed in this section satisfies the ~~provisions of preparation of an economic impact statement~~
23 pursuant to this section."

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25 NEW SECTION. Section 3. Repealer. The following section of the Montana Code Annotated is
26 repealed:

27 2-4-111. Small business impact analysis -- assistance.

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